



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

EAST KINGSTON TEACHERS ASSOCIATION :
NEA-NEW HAMPSHIRE :

Complainant :

v. :

EAST KINGSTON SCHOOL BOARD :

Respondent :

CASE NO. T-0379:1

DECISION NO. 92-159

APPEARANCES

Representing East Kingston Teachers Association/NEA-NH:

Steven R. Sacks, Esq., Counsel

Representing East Kingston School Board:

Michael King, Esq., Counsel

Also appearing:

Kathleen M. Lynch, School Board
Nancy B. Rhodes, E.K.E.A.

BACKGROUND

The East Kingston Teachers Association, NEA-New Hampshire (Association) filed unfair labor practice (ULP) charges against the East Kingston School Board (Board) on June 1, 1992 alleging violations of RSA 273-A:5 I (h) and (i) as the result of an alleged unilateral change in health care benefits. The Board filed an answer and counterclaim on June 16, 1992. The case was heard by the PELRB on July 23, 1992.

FINDINGS OF FACT

1. The East Kingston School Board is a public employer of teachers and other employees as defined by RSA 273-A:1 X.

2. The East Kingston Teachers Association, NEA-New Hampshire, is the duly certified bargaining agent of professional employees of the East Kingston School system.
3. For all times pertinent to these proceedings the parties had and operated under a collective bargaining agreement for the period September 1, 1989 through August 31, 1992. That contract provided that the District would pay 100% of the premium for single, two person or family membership in the ASSET Healthcare insurance plan of the N.H. School Boards Insurance Trust.
4. If the Association wanted to negotiate cost items for the 1992-93 school year, it was obligated to give notice under RSA 273-A:3 II (a) at least one hundred twenty (120) days prior to the budget submission date of February 1st. Neither the Association nor the Board gave such notice. Thereafter, the Board proposed to negotiate on contract language but expressed its unwillingness to negotiate on cost items for the 1992-93 school year.
5. The 1989-92 collective bargaining agreement (CBA) provided at Article XXI (A) that it "shall remain in full force and effect until August 31, 1992 or until a successor Agreement is ratified by the parties."
6. On January 15, 1992, the Board wrote the Association telling the teachers that the Board had "struggled at some length with the 1992-93 budget" and that it "includes salaries for teachers based on the current salary schedule plus step. The proposed budget also includes Blue Cross or ASSET Comp 100 health insurance, funded at 100% by the School Board." This level of health insurance for 1992-93 represents a cost increase of \$4521 to the Board or twelve (12%) percent over the cost of the 100% paid premiums for the coverage in effect under Article XVI, paragraph 1 of the CBA for the 1991-92 school year.
7. The ASSET Comp 100 health insurance program to be implemented at the end of the set term of the CBA on August 31, 1992 differs from the coverage in effect under Article XVI of the CBA, to the extent it institutes a \$100 individual deductible up to a maximum \$500 deductible for families, neither of which applied under the CBA.

DECISION AND ORDER

These parties were operating under a CBA. It contained its own duration/continuation provisions "until August 31, 1992 or until a successor Agreement is ratified by the parties." We read the duration clause in the alternative: either August 31, 1992 or until ratification of a successor agreement since it is illogical to expect that a successor agreement, by its terms, would become effective before August 31, 1992. Thus, the CBA, by virtue of the 1989 agreement of the parties, remained in effect at all times pertinent to this complaint since no successor agreement had been negotiated or ratified. Under such circumstances, it is inappropriate for either side to unilaterally alter the status quo pending the resolution of the successor CBA through the negotiations process. We reiterated that principle in Milton Education Association (Decision No. 91-62, September 11, 1991) Final authority for spending must be reserved to and statutorily rests with the legislative body. RSA 273-A:3 II (b). Notwithstanding this authority, the negotiations process must be reserved to the negotiators. In the meantime, the rules relating to the status quo apply within the framework of the prior contract, i.e., excluding such items as steps which would be considered "cost items" requiring additional funding.

This is not the typical "step" case; it clearly is a status quo case. Under the obligations set forth in RSA 273-A:3 II (a) "any party desiring to bargain shall serve written notice...." (Emphasis added) Neither did thereby suggesting that neither party wanted to bargain "cost items" and/or that neither party was unwilling to live under the duration language of Article XVI (A) of the CBA. The notice provisions of RSA 273-A:3 II apply to both sides.

Under the facts of this case it appears that the Association wanted to bargain cost items for the 1992-93 contract year. Through its inadvertence relative to giving notice it is barred from doing so. Likewise it appears that the Board may have wanted to and ultimately did change certain health insurance benefits. These changes were a matter of costs and should have been the product of the negotiations process. If management wanted to change them, given the language of Article XVI of the CBA, or if management suggested that contract continuance under those conditions would not meet with voter approval, it should have given its notice of a desire to bargain under RSA 273-A:3 II (a). It did not and, therefore, is bound by the terms of its agreement "until a successor Agreement is ratified by the parties." To hold otherwise would ignore the CBA, would be a misreading of RSA 273-A:3 II (a) as well as CBA Article III, Section 5, and would mean that only employee organizations would be required to give such a notice in an attempt to negotiate changes in contract benefits. Meanwhile, management would be allowed to ignore the notice

requirement and proceed to make unilateral changes in "cost item" benefits after those cost items, absent an agreement of the parties to the contrary, are no longer open to negotiations. This is not the intent of RSA 273-A.

Under these circumstances, we find that the Board's conduct constituted a ULP under RSA 273-A:5 I (h) and (i). The Board must return to the status quo by maintaining health insurance benefits under the 1989-92 scheme for the 1992-93 school year unless modified by negotiations. Keene Professional Firefighters (Decision No. 91-36, June 11, 1991) This order directing the maintenance of the status quo is not intended to extend beyond the conclusion of the 1992-93 school year on August 31, 1993.

So ordered.

Signed this 21st day of October, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and Arthur Blanchette present and voting.